THE HON'BLE SRI JUSTICE C.V. RAMULU

+W.P.No.12057 of 2002

%Dated 07-9-2007

Between:

M/s. Police Officers' Association,
Adilabad Unit, C/o Superintendent
of Police, S.P. Office, Adilabad,
rep. by its President M.A.Kareem … Petitioner

and

United India Insurance Co.Ltd.,
(a subsidiary of General Insurance
Corporation of India) rep. by its
Managing Director, 24, Whites Road,
Chennai-600 014 and others … Respondents

!Counsel for the petitioner : SHRI D. RAMALINGA SWAMY

^Counsel for Respondents: SHRI RAVI SHANKAR JANDHYALA

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? Cases referred

1. 1966 ACJ 267
2. AIR 1989 A.P.140
3. 1995(1) ALD 440
4. 2000(4) ALT 531
5. AIR 1986 SC 1571
6. AIR 1995 SC 1811
7. AIR 1989 SC 997
8. 1990(3) SCC 752
9. 1991(1) SCC 212

10. 1999(7) SCC 89

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Friday, 7th day of August,2007

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ORDER:

This Writ Petition is filed seeking a Mandamus declaring the unilateral cancellation of Long Term Group Janata Personal Accident (JPA) policy bearing No.050600/47/51/1364/98 issued by the respondents, in the midst of currency of the policy, as arbitrary and illegal and consequently to declare that the same is enforceable under law and condition No.6 of the said policy is not valid and enforceable and also to declare the letter dated 12-4-2002 addressed by the 2nd respondent as arbitrary and illegal.

Petitioner is Police Officers' Association, Adilabad District Unit represented by its President-M.A.Kareem. Respondent No.1 is the Managing Director of United India Insurance Company Limited, Chennai and the 2nd respondent is the Divisional Manager of the said company at Warangal.

According to the petitioner, police forces of the Government of Andhra Pradesh are trained and highly motivated and vital organs for maintaining law and order with the object of meeting, facing and tackling even grave law and order situation including problems, such as, communal, terrorist and desperados. Thus, in the course of

discharge of their duties, the members of the police forces have to take necessary risk of life inherent in the job. As such, they require insurance cover for their lives and also for the possible accidents and injuries that may be caused in course of execution of their jobs. Respondent No.1-United India Insurance Company Limited is a subsidiary of the General Insurance Corporation of India under the control of the Insurance Regulatory and Development Authority (IRDA), Ministry of Finance, Government of India. The General Insurance business was nationalized in the year 1972 by the General Insurance Business Nationalization Act,1972 and as such, the General Insurance Corporation of India is an instrumentality of the State. Respondent No.1, a subsidiary of the Corporation and the 2nd respondent- Warangal District Branch Office of the 1st respondent, are instrumentalities of the State and are amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India. Respondent No.2 contacted the petitioner and offered to issue 10 years Long Term Group Janata Personal Accident Insurance Policy to the employees working in the Police Department, covering the risk of death and disability arising out of any accident or otherwise on payment of one time premium in *lump sum*. As per the offer, petitioner-association intimated the members of various forces working in its jurisdiction at various places and obtained their willingness to take membership of the Janata Personal Accident Insurance Policy. Several members of the police forces working in Adilabad District from top to bottom gave their consent. Accordingly, they made one time *lump sum* payment of the insurance premium payable towards the Long Term Group Janata Personal Accident Insurance Policy No.050600/47/51/1364/98 covering the period from 5-2-1999 to 4-2-2009. The premium amounts were remitted to the respondents by collecting necessary

amounts from the salaries of the individual employees. As per its terms, the policy covered the risks of death and personal injuries for a period of 10 years upto 4-2-2009. Thus, the full premium amount for the entire period of 10 years was paid in advance and it was accepted covering the risk of all the insured members of the Police force of Adilabad District represented by the Police Officers' Association, Adilabad and Karimnagar. While so, the Association received a communication dated 12-4-2002 from the 2nd respondent stating that as per condition No.6 of the terms of policy, the policy was cancelled with effect from 27-4-2002, on the advise of the Regional Office. In the said communication it is also stated that they are entitled for the return of prorata premium for the unexpired period. According to the petitioner, cancelling the policy unilaterally under the pretext of condition No.6 of the terms of policy is arbitrary and illegal and as such, it challenges the *vires* of condition No.6.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is stated that the very Writ Petition is not maintainable in view of the fact that it is only a private contract between the insurance company and the individuals. As such, petitioner could not have filed a Writ Petition in this shape. This is a concluded contract and, therefore, the impugned action is not amenable to the jurisdiction of this Court under Article 226 of the Constitution. The decision of cancellation of policy taken by the respondent-insurance company is an exercise of the terms and conditions of policy and if the petitioner is aggrieved by the same, the proper remedy is to approach the civil Court for damages and not to resort to extra-ordinary jurisdiction of this Court. The condition enabling the respondents to cancel the policy does not give any right to the petitioner-association of being heard before the policy is

cancelled by the respondent-organization. In other words, the clause does not envisage issuance of notice to the petitioner-association. The rule of *audi alteram partem* is a principle of public law and the same cannot be invoked under the private law, which is governed by the terms and conditions of contract between the parties. Even otherwise, respondents have given 15 clear days time before cancelling the policy. The impugned letter dated 12-4-2002 says that the policy will be cancelled with effect from 27-4-2002 and sufficient time was given to the petitioner. The said letter was received by the petitioner on 13-4-2002. Therefore, the complaint that no notice was given to the petitioner before cancelling the policy cannot be sustained. The Writ Petition is devoid of merits and is liable to be dismissed.

Learned counsel for the petitioner strenuously contended that unilateral cancellation of the policy without assigning any reasons and even without issuing any show cause notice is highly unjust, improper and contrary to law. Respondent No.1 being an incorporated company as a subsidiary of the General Insurance Corporation of India, under law, cannot act to the detriment of the insured persons unilaterally unlike private companies. Petitioner was lured by making an offer that the risk will cover for a period of 10 years upto 4-2-2009 and it is unjust to terminate the policy unilaterally during the currency of the policy without any justifiable grounds. It is expected of a nationalized organization doing insurance business to properly protect the interest of the insured persons. The Insurance Regulatory and Development Authority Act,1999 (Act 41 of 1999) came into force from 19-4-2000. Under Section 14(2)(b) of the said Act, the Authority constituted under the Act is competent to issue necessary Regulations for protection of the interests of the policy holders. Consequently, the Insurance

Regulatory and Development Authority (Protection of Policy holders' interest) Regulation,2001 was issued laying down what conditions need be stated in a Life Insurance Policy and in a General Insurance Policy, in Clauses (5) and (6) of the Regulation. Life insurance business means, the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death or happening of any contingency dependent on human life. The Janata Insurance Policy issued by the respondents is a life insurance policy. The insured persons paid premium in full in advance and so, the cancellation of the policy in the middle without any basis, purely motivated for commercial reasons, vitiates the fundamental rights. Even assuming that it is done under condition No.6, the said condition itself is irrational and unenforceable under law. The effect of cancellation of the policy during the currency of the period would virtually make the policy holders without any insurance cover, since they cannot now afford to pay higher rates of premium and obtain fresh policies, as they became older than what they were in the year 1998. No notice of any kind was issued before condition No.6 was invoked. Therefore, even in the teeth of condition No.6, the cancellation of policy unilaterally and without any notice is arbitrary and illegal.

Learned counsel for the respondents strenuously contended that this is a private contract between the parties and the petitioner-association has signed the document of contract with eyes wide open. The contract is in the nature of a private contract between two private individuals. Therefore, the question of amenability of the dispute under Article 226 of the Constitution does not arise. Either the petitioner should approach the civil Court and obtain damages for the breach of contract, if any, etc., or go before the Consumer Forum

complaining as to the non-performance of the services required, by the organization. But, a Writ Petition, in this shape, is not maintainable.

Even otherwise, in the teeth of condition No.6, which is one of the conditions of the policy, the insurance company is entitled to cancel the policy as and when it was found to be so necessary and the same cannot be questioned in a Writ Petition like this. Against a concluded contract no Writ Petition lies. In this regard, the learned counsel relied upon various judgments i.e. (i) **GENERAL ASSURANCE SOCIETY LTD. V. CHANDMULL JAIN**[1], (ii) **N.T.P.C. LTD. v. M/s. BHANU CONSTRUCTION CO.P.LTD., HYDERABAD**[2], (iii) **N.JAYA KRISHNA v. THE UNITED INDIA INSURANCE CO.LTD.**[3], and (iv) **N.VENKATESWARLU v. REGIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD**[4] and submitted that a Constitution Bench of the Supreme Court way back in 1966 held that conditions of contract are purely private in nature between the parties, and if any one of them wants to enforce the same or complains violation of the same, the only remedy available is to go before the civil Court and not under Article 226 of the Constitution of India and the petitioner cannot question condition No.6 as arbitrary and illegal.

In **GENERAL ASSURANCE SOCIETY LTD. V. CHANDMULL JAIN** (1 supra), the Supreme Court held as under:

> "16. It was next contended that the expression 'usual conditions of the Society's policies' could not be read to include condition 10 which was not a usual condition, where it gives a right to terminate the policy at will to the company. This is not correct. Such a condition is mentioned in almost all the books on the law of Insurance. See Halsbury's Laws of England, (3rd Edn.), Vol. 22, p. 245, Para 474 Macgillivara on Insurance Law, (5th Edn.), Vol. 2, p. 963, Para 1981; Welford and Otter-Barry's Fire Insurance, (4th Edn.), pp. 178-179; and Richards on Insurance (5th Edn.), Vol.13, p 1759,

Para 531. In (1889) 14 AC 98, such a condition is not only mentioned but also discussed. An identical condition in a fire policy was also mentioned and discussed in a decision of this Court reported in Central Bank of India Ltd. v. Hartford Fire Insurance Co. Ltd. AIR 1965 SC 1288. There was thus nothing unusual in the inclusion of such a condition in the policy and the reference to the usual conditions would, therefore, include a reference to condition 10.

17. This condition gives mutual rights to the parties to cancel the policy at any time. To the assurer it gives a right to cancel the policy at will. It was contended that such a condition was so unreasonable that it could not be allowed to stand. It was argued on the authority of Sze Hai Tong Bank Ltd. v. Rambler Cycle co. Ltd., (1959) AC 576 that the extreme width of the condition must be cut down by an implied limitation which was that the main object and intent of the contract should not be allowed to be defeated and that object and intent was the insuring of the property against floods and cancellation of the policy when floods had started would defeat the main object and intent of the contract. This argument mixes up two situations. The first is a question of the pure principle. There is nothing wrong in including such a mutual condition for the cancellation of the insurance. An assured may like to invoke such a condition when the policy is found to differ from the policy, he agreed to accept or it contained a term of condition to which he did not agree. He may not accept the same policy from another company to which he, did not make a proposal. He may invoke this condition if the company transfers its assets and business to another. Just as the assured may like to terminate the policy without assigning any reasons and at his will, the assurer may also do likewise."

In **N.T.P.C. LTD. v. M/s. BHANU CONSTRUCTION CO.P.LTD., HYDERABAD** (2 supra) a Division Bench of this Court held merely because the Government, or an Officer of the Government, or an agency or instrumentality of the State enters into a contract for execution of certain works with another person, it cannot be said to be acting in the public law field. Its rights and obligations are the same as those of any other person entering into a contract. The only limitation is that before entering into the contract, it must act consistent with the guarantee contained in Article 14 of the Constitution of India. But, once a contract is entered into, it is the terms of the contract that

govern, and no question of Art.14, or arbitrary action, arises. The very concept of one party to the contract acting arbitrarily and thereby violating Art.14, is misplaced. The action may be wrongful, but it is not such an action as is amenable to writ jurisdiction on the ground that it is arbitrary. If a contract is terminated wrongfully, it cannot be questioned in a Writ Petition saying that the termination is arbitrary or unreasonable. The concept of arbitrary or unreasonable action amenable to writ jurisdiction is relevant only where the State acts under a statute, or in exercise of its executive/administrative power. Taking any other view would not only be contrary to well established authority, but would also cast an uncalled for burden upon the High Court. Not only this Court would be exercising its writ jurisdiction, for determining the private rights of the parties arising from, or relating to a contract, but would also be obliged to enquire into disputed questions of fact, which it would not ordinarily undertake.

In **N.JAYA KRISHNA**'s case (3 supra) following the Judgment in **BHANU CONSTRUCTION CO.** case (2 supra), this Court held that a Writ Petition seeking a direction to the Insurance Company to pay compensation for the loss of goods covered by insurance policy cannot be entertained, since triable issues regarding contractual rights are involved, which can be decided by a competent civil Court after enquiry.

In **N. VENKATESWARLU**'s case (4 supra) it was held that the High Court cannot direct the insurance company to pay the money claimed under the policy and the proper remedy is to invoke the jurisdiction of the civil court to settle the claim.

Whereas, learned counsel for the petitioner relied upon a Judgment reported in **CENTRAL INLAND WATER TRANSPORT CORPORATION LTD. V. BROJO NATH**[5] and submitted that

condition No.6 is void and opposed to public policy and, therefore, the same is liable to be declared as such. Learned counsel also stated that even contractual rights between the parties can be adjudicated by this Court and a Writ Petition of this nature is maintainable. In this regard, learned counsel relied a decision of the Apex Court reported in **L.I.C. OF INDIA v. CONSUMER EDUCATION AND RESEARCH CENTRE**[6]. Further, he has also argued that a notice is necessary before cancellation of the policy and when the policy is sought to be cancelled by a public authority, may be contractual in nature, the Corporation is supposed to give a notice, particularly in a case of statutory contract like this.

In **CENTRAL INLAND WATER TRANSPORT CORPN.LTD** case (5 supra), the Apex Court held as under:

> "90……. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that, the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and

the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its, own facts and circumstances."

In **L.I.C. OF INDIA v. CONSUMER EDUCATION AND RESEARCH CENTRE** (6 supra) the Apex Court while dealing with a term in the policy issued by Life Insurance Corporation and considering the decision of the Constitution Bench in **CHANDMULL JAIN**'s case (1 supra), held as under:

"28…….. The arms of the High Court is not shackled with technical rules or of Procedure. The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amendable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy in now narrowed down. The actions of the appellants bears public character with an imprint of public interest element in their offers with terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we have no hesitation to hold that the writ petition is maintainable to test the validity of the conditions laid in Table 58 term policy and the party need not be relegated to a civil action."

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned letter and other material made available on record.

From the above averments, the only question that falls for

consideration is whether the policy could have been cancelled unilaterally without any notice to the insured and whether a Writ Petition is maintainable.

Though it is strenuously argued by the learned counsel for the respondents that it is purely a private contract between the parties and in view of condition No.6, which reads as under:

> "6. The company may at any time by notice in writing cancel this Policy provided that the Company shall in that case return to the insured the then last paid premium less a prorata part thereof for the portion of the current insurance period, which shall have expired. Such notice shall be deemed sufficiently given if posted addressed to the insured at the address last registered in the Company's books and shall be deemed to have been received by the insured at the time when the same would be delivered in the ordinary course of post."

the insurance company is liable to cancel the policy and this Court cannot interfere with such an act, I am of the view that the Judgment rendered in **CHANDMULL JAIN**'s case (1 supra) has no relevance to the issue that arises for consideration in this Writ Petition. It is a fact that the respondent-insurance company is an instrumentality of the State under Article 12 of the Constitution and is amenable to the writ jurisdiction under Article 226 of the Constitution. Further, the contract entered into between the parties is a statutory contract. The very Corporation has come into existence under the policy of the Government of India under the Insurance Regulatory and Development Authority Act for the welfare of the citizens. Therefore, in a case like this, where the insurance policy is sought to be withdrawn without any notice cannot be said to be lawful and justified. However, this Court under Article 226 can definitely go into the fact as to whether the cancellation of the policy, may be, even if it is a concluded contract between the parties, is correct or not; more so, for the reason that it is a statutory contract.

It is settled law that the Courts cannot interfere with Government's freedom of contract, invitation of tender and refusal of any tender, which pertains to policy matters, but whether the decision/action is vitiated by arbitrariness, unfairness, illegality, traditionality or Wednesbury unreasonableness i.e., when decision is such as no reasonable person on proper application of mind could take or there is procedural impropriety, the Courts can look into the matter. The modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The decision must be tested by application of Wednesbury principle of reasonableness and must be free from arbitrariness not affected by bias or actuated by *mala fides.* The respondent-insurance company is an authority under Article 12 of the Constitution and must act fairly and reasonably when dealing with the customers. The State and its instrumentalities are duty bound to act with fairness and take into consideration only the relevant materials when reaching decision even with regard to the contractual obligations.

In **STATE OF U.P. v. DHARMENDRA PRASAD SINGH**[7] it was held that the question whether the forfeiture and cancellation of lease by the Government were valid or not could not be decided by the writ court, but judicial review is open to examine the decision making process in a case where lease was cancelled and the lessee had claimed to have made large investment on the land in question and where the number of grounds require determination of factual matters of some complexity. It was also held that the statutory authority should afford a personal hearing to the lessee after the issue of show cause notice, setting out the precise grounds before cancellation of the lease. Further, the Apex Court in **MAHABIR AUTO STORES v.**

INDIAN OIL COMPANY[8] held that where the instrumentality of the State enters the contractual fields and where the transaction between the parties were going on for two decades, fairness should be there to the parties concerned before treating the contract as cancelled and the affected party against whom action was sought to be taken under the contract should be taken into confidence and decision should be based on fair play, equity and consideration of an institution like a public sector undertaking and must act fairly. Further, in **SRILEKHA VIDYARTHI v. STATE OF U.P.**[9] it was held that the Constitution of India does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Exclusion of Article 14 in contractual matters is not permissible in constitution scheme. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. Even assuming that it was necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, it can be said that the ultimate impact of all actions of the State or public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. Therefore, it would be difficult and unrealistic to exclude the State action in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14. Thus, the wide sweep of Article 14 undoubtedly takes within its fold the Circular issued by the State of U.P., and in exercise of its executive power, irrespective of the precise nature of appointment of Government counsel in districts and other rights, contractual or statutory, which the appointees may have. The

agreement provided that their services can be terminated “at any time without assigning any cause”. It was held that the expression ‘at any time’ merely means that the termination may be made even during the subsistence of the term of appointment and ‘without assigning any cause’ means without communicating any cause, but this cannot be equated with ‘without existence of any cause’. It does not mean that the appointment is at the sweet-will of the Government, which can be terminated at any time without the existence of any cogent reason. Their non-suitability has to be decided on the basis of existence of materials. In **STYLE (DRESS LAND) v. UNION TERRITORY, CHANDIGARH**[10] it was held by the Apex Court that the Government cannot act like a private individual in imposing a condition solely based on standards, which are not arbitrary or unauthorized. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State. Exercise of all powers must be for public good instead of being an abuse of power. Action of renewability should be gauged not on the nature of function, but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to contractual field. The State action which is not informed by reason cannot be protected as it would be easy for the citizens to question such an action being arbitrary.

As stated above, in **LIC OF INDIA v. CONSUMER EDUCATION AND RESEARCH CENTRE** case (6 supra), the Apex Court held that in the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e.

fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21 of the Constitution. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest. It is the exercise of public power or action hedged by public element that becomes open to challenge. If it is shown that the exercise of power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens simpliciter do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by decisions. An unfair and untenable or irrational clause in a contract is unjust and amenable to judicial review. Even while explaining the Judgment of the Constitution Bench in **CHANDMULL JAIN**'s case (1 supra), in the said case, the Supreme Court held that the arms of the High Court are not shackled with technical rules or of procedure. The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amenable to anvil of Article 14 of the Constitution.

From the above discussion, it is clear that the respondent-insurance company being a public authority, could not have

cancelled/withdrawn the policy merely invoking Condition No.6 of the Policy without assigning any reasons therefor. Mere giving a letter dated 12-4-2002 saying that the policy will be cancelled with effect from 27-4-2002 cannot be a sufficient notice or a notice furnishing reasons. In a case of this nature, even if there is any genuine reason for canceling the policy, the petitioner is entitled for a show cause notice and after inviting explanation, the authorities are at liberty to take action whatever is justifiable, though the conditions of the policy do not say so. In this case, no such effort was made by the respondent-company, which is a public authority. No reasons whatsoever have been furnished by the respondents in the said letter or in the counter for cancelling the policy, except saying that during the visit of the Auditors of the Comptroller and Auditor General's Office, it was pointed out that all police personnel in the State of Andhra Pradesh are already covered under Group Personal Accident Policy issued by the State Sector Branch under the control of Divisional Office-VI, Hyderabad and as such, there is no need to issue another policy for the additional sum insured by the Divisional Office, Warangal and after consultation with all the necessary offices/authorities and as advised by the Regional Office, Hyderabad, the 2nd respondent had chosen to cancel the policy in exercise of the powers vested in him under Condition No.6. In fact, in the guise of enabling condition No.6 of the terms of policy, the respondents cannot unilaterally cancel the policy. The question whether condition No.6 is arbitrary and illegal is left open to be decided in an appropriate case. Therefore, the contention of the learned counsel for the respondents that this is a concluded contract and even if it is statutory in its nature, contract is nothing but a private understanding between the parties and, therefore, condition No.6 is binding on the petitioners and

cancellation/withdrawal of the policy as per condition No.6 cannot be questioned or it cannot be examined on the anvil of Article 14 of the Constitution, cannot be countenanced. The decisions relied upon by the learned counsel for the respondents have no application to the facts of this case, in view of the above discussion.

For all the above reasons, the impugned action of the respondents is liable to be declared as arbitrary and illegal. Consequently, the impugned letter dated 12.4.2002 is set aside.

Accordingly, the Writ Petition is allowed. No order as to costs.

However, this Order will not preclude the respondents from issuing a show cause notice to the petitioner furnishing the reasons, inviting objections and taking a decision thereafter, as per law.

07-9-2007

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[1] 1966 ACJ 267

[2] AIR 1989 A.P.140

[3] 1995(1) ALD 440

[4] 2000(4) ALT 531

[5] AIR 1986 SC 1571

[6] AIR 1995 SC 1811

[7] AIR 1989 SC 997

[8] 1990(3) SCC 752

[9] 1991(1) SCC 212

[10] 1999(7) SCC 89